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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

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Amendment of Parts 1, 21 and 74 to
Enable Multipoint Distribution
Service and Instructional
Television Fixed Service Licensees
to Engage in Fixed Two-Way
Transmissions

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MM Docket No. 97-217

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File No. RM-9060
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REPLY COMMENTS

Wireless One of North Carolina, L.L.C. ("WONC"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits these reply comments in the above referenced proceeding. WONC believes that providing MDS and ITFS licensees with the flexibility to utilize their frequencies for two-way transmissions will prove to be a boon to the industry and will serve the public interest as well as the interests of the educational community.

I. Application Processing

WONC agrees with the Petitioners that the continuing application processing delays that have plagued the wireless cable industry since its inception will doom the successful development of two-way transmissions. Under the proposal put forth by Petitioners, such delays would no longer be an issue. Petitioners' Comments at pp.15-20. Under the Petitioners' proposal, rather than analyze every two-way application filed, the Commission staff would only have to review applications for completeness before placing them on public notice or when a petition to deny the applications has been filed with the Commission. All other applications would be granted on the 61st day after appearing on public notice as accepted for filing. As noted in its initial comments, WONC believes

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that the Petitioners have proposed sufficient safeguards and opportunities for affected licensees and applicants to evaluate and file any objections to two-way applications while at the same time streamlining the processing of unopposed applications. In addition to the applications appearing on public notice, the applicants will be required to serve the affected licensees and applicants thereby affording them the opportunity to review the proposal before it appears on public notice. As a result, scarce Commission resources can be focused on contested applications and on resolving such situations quickly.

WONC agrees with Petitioners' proposal that the Commission should institute a one-day filing system for ITFS major modifications. Petitioners' Comments at p. 47. WONC also believes that the Commission should adopt rules that will allow expedited processing of ITFS major modifications. Id. at p. 52. The problems with the Commission's current ITFS processing system are evident from the fact that the Commission staff is still processing ITFS applications and major modifications that were filed more than two years ago in the one week ITFS filing window opened by the Commission in October of 1995 ("October Window"). If the Commission opened a new filing window for two-way applications now, the Commission staff would be inundated with yet more applications. This would only delay the ability of ITFS licensees to offer two-way service to their receive sites and to the public as part of a wireless cable system.

By adopting Petitioners' proposal for expedited processing of ITFS major modifications, the delays can be avoided and two-way service can be provided to the public quickly. The Petitioners have proposed that future ITFS major modifications be automatically granted sixty (60) days after appearing on public notice as long as they do not propose a power flux density in excess of -73 dBW/m² at their PSA boundaries and as long as no petition to deny is filed against the application.

Petitioners' Comments at p.53. WONC believes that adoption of these changes to the Commission's Rules would serve the educational community and the public by ensuring that ITFS licensees can take full advantage of two-way service quickly. This should be particularly important to the educational community which will only benefit from the use of two-way for Internet and other related services. Although WONC recognizes that the changes proposed to the rules are a drastic change from the current rules, WONC believes such changes are necessary if the wireless cable industry is to remain competitive in the marketplace and if ITFS, which is an integral component of the wireless cable industry, is to remain viable.

II. Technical Proposals

WONC supports the new proposal put forth by Petitioners regarding protection for response station hubs. Petitioners' Comments at pp.65-71. WONC believes the proposal will provide greater flexibility for two-way applicants while assuring protection for the response station hub.

As indicated in its initial comments in this proceeding, WONC does not believe that the Catholic Television Network's ("CTN") concerns regarding brute force overload are warranted and does not believe the extreme solutions proposed in CTN's Request for Supplemental Comment Period and Extension of Time, MM Docket No.97-217 (filed Nov. 25, 1997) ("Request") should be implemented.¹ However, WONC agrees with Petitioners' proposal that the Commission require the licensee of a response hub licensed to operate in the 2.5 GHz band provide 30 days notice that

¹ WONC agrees with the Instructional Telecommunications Foundation ("ITF") that the need for upstream and downstream capacity will vary by market. ITF Comments at p.31. WONC believes that it is this variation that necessitates providing licensees and operators with the flexibility to develop two-way systems as dictated by the needs of a particular market.

it will be commencing operation to all those affected MDS and ITFS licensees in the band.² Petitioners' Comments at p. 104. This notice will give ITFS licensees the opportunity to notify their receive sites and to adopt any procedures for dealing with possible brute force overload.

WONC supports Petitioners' proposal that the Commission should coordinate the returning of any MDS or ITFS licensee to other frequencies in the 2.5 GHz band at the cost of the proponent of such returning if the Commission finds that such returning will promote the introduction of advanced technologies. Petitioners' Comments at p. 108. Although WONC does not generally support Commission intrusion into the individual operating decisions of a licensee or operator, WONC believes that the introduction of new technologies and efficient use of the spectrum warrants such intrusion. In the best of circumstances, licensees will voluntarily agree to swap frequencies. However, there will be situations where a licensee refuses to move to alternative frequencies even though it will not adversely affect its operation in any way. Such obstinate and baseless refusal to radian should not be permitted to stop the development of advanced technology and the provision of service to the public. Thus, WONC supports Petitioners' proposal that the Commission adopt procedures to guide the parties during voluntary negotiations to radian and to govern the resolution of disputes that cannot be resolved without Commission intervention. Petitioners' Comments at p. 111. WONC further supports the specific three-step process for handling returning proposals outlined by Petitioners. See Petitioners' Comments at pp. 112-114.

² In its Comments, CTN has also proposed certain notification procedures. CTN Comments at pp. 13-14. However, once again, CTN has proposed a complex set of solutions to a problem that does not require such extreme solutions. WONC does not support adoption of the criteria espoused in CTN's Comments because adoption of such criteria would be detrimental to development of two-way service.

III. Joint Statement of Position

WONC supports the adoption of the proposals in the Joint Statement of Position submitted to the Commission by the National ITFS Association, Inc. ("NIA") and Wireless Cable Association International, Inc. ("WCA") on January 8, 1998 ("Joint Statement"). WONC agrees with the Petitioners that adopting rules based upon the concepts embodied in the Joint Statement will help to preserve the instructional nature of ITFS but will also allow ITFS licensees to share the benefits of the new digital environment. Petitioners' Comments at pp. 135-136. Among the most important concepts embodied in the Joint Statement is that no ITFS or MDS licensee can be forced to engage in two-way transmissions and that the facilities of those licensees who choose not to engage in two-way transmissions are entitled to protection from systems employing advanced technology.³

WONC endorses the Joint Statement provision mandating that each ITFS licensee have a minimum of 25% of its channel capacity for immediate use or recapture. Joint Proposal at ¶ I. WONC believes that this will ensure that each ITFS licensee has adequate capacity for programming and other forms of instructional service while also ensuring that wireless cable operators can utilize excess capacity for service to the public. WONC does not believe that the Commission should increase the amount of ITFS programming that an ITFS licensee must transmit if it chooses to take advantage of advanced technologies. Petitioners' Comments at p.143. As noted in Petitioners' Comments, many ITFS licensees find it difficult to satisfy the current programming requirements and any increase in the requirements would only increase this difficulty and might discourage ITFS licensees from taking advantage of advanced technology. Id. at p. 144. The Commission should be

³ In its discussions with several of the ITFS applicants in North Carolina, WONC has found that most applicants want to take advantage of advanced technology, particularly the ability to provide two-way service to receive sites.

encouraging ITFS licensees to take advantage of advanced technologies, not discouraging them by instituting unrealistic burdens on the ITFS community.

WONC agrees with Petitioners' proposal that Section 74.931(e)(9) be amended to allow ITFS licensees to satisfy mandatory programming requirements using any channel in a wireless cable system. Petitioners' Comments at p. 146. It should be emphasized that no ITFS licensee will be required to shift its programming. Rather this change to the rule will give ITFS licensees the flexibility to transmit their educational programming on any channel in the system. In conjunction with this proposal, WONC supports allowing channels to be swapped among ITFS and MDS licensees as suggested by the SW&M ITFS Parties. This will also provide greater flexibility to wireless cable operators to group channels for upstream and downstream transmissions.

In addition, WONC supports the proposal advanced by the DL&A Parties that each ITFS licensee be required to preserve at least one 6 MHZ channel capable of downstream video transmissions to receive sites so that an ITFS licensee can always engage in downstream transmissions, even if the licensee terminates its participation in the wireless cable system. This should alleviate the concerns of ITFS entities who raised the issue of how to continue operations after terminating their relationship with a wireless cable operator. However, WONC agrees with Petitioners that the Commission should not intrude on negotiations by ITFS licensees regarding post-relationship facilities. Petitioners' Comments at p.153. WONC generally believes that, except for ensuring adherence to the current rules, the Commission should forbear from becoming involved in the contractual relationships between wireless cable operators and ITFS licensees, particularly as they pertain to post system operations.

IV. ITFS Lease Agreements

WONC agrees with Petitioners' proposal that the Commission should allow ITFS leases to extend to 15 years rather than 10 years as provided under the current rules. Petitioners' Comments at p. 155. This proposal is supported by NIA and is included in the Joint Statement. Allowing ITFS leases to extend to 15 years (subject to license renewal) will give operators greater assurance that they will have access to sufficient channel capacity and will enable them to obtain financing for their systems.

In addition, WONC joins with the Petitioners in urging the Commission to repeal two of its policies regarding ITFS leases. The first is the Commission's policy barring lease provisions that require an ITFS licensee to assign the remaining obligations under an excess capacity agreement if the licensee chooses to assign the underlying license. Petitioners' Comments at pp. 158-159. The second is the Commission's policy of rejecting lease provisions which require ITFS licensees to give an operator a reasonable opportunity to obtain an eligible entity to accept assignment of the license before the licensee turns in the authorization for cancellation. Id. Inclusion of these provisions in ITFS leases are the only way that operators can be assured that they will have use of the channels throughout the term of the lease. Without this assurance wireless cable operators cannot establish a successful business and are less able to obtain much needed financing.

Finally, WONC does not believe that the Commission should require the amendment of all ITFS leases to include provisions regarding digital technology. As noted in Petitioners' Comments, many leases already provide for the introduction of digital technology. Id. at p. 163. For those leases that do not include such provisions, the parties to those leases should be left to negotiate new provisions without interference from the Commission.

CONCLUSION

WONC believes that giving MDS and ITFS licensees the flexibility to utilize their frequencies for two-way service will provide a much needed boost to the industry and competition to the existing cable operators. Adoption of the Petitioners's proposals will give wireless cable operators an opportunity to provide a much needed service to the public. In addition, ITFS licensees and the educational community will also benefit from the introduction of two-way technology.

Respectfully submitted,

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